

Amendment No. 1 to HB1349

Harwell
Signature of Sponsor

AMEND Senate Bill No. 1375

House Bill No. 1349*

by deleting Section 3 of the printed bill and by substituting instead the following:

SECTION 3. It is in the public interest to authorize and encourage the adoption of natural gas conservation plans that promote the wise use of natural gas and natural gas infrastructure through the development of alternative rate designs and other mechanisms that more closely align the interests of natural gas utilities, their customers, and the state, and improve the efficiency of ratemaking to more closely reflect public policy supporting conservation and energy efficiency.

AND FURTHER AMEND by deleting subsections (a), (b) and (c) of Section 5 and by substituting instead the following:

(a)

(1) Notwithstanding any law to the contrary, each natural gas utility shall have the option to file a decoupling mechanism or annual rate review plan or both a decoupling mechanism and an annual rate review plan, together with a natural gas conservation plan, as provided in this part.

(2) Any natural gas conservation plan filed with the authority shall comport with all rules and regulations of the authority and may include one (1) or more residential, small commercial, or small general service customer classes, but shall not apply to large commercial or large industrial classes of customers.

In addition, such plan shall include the following components:

(A) A normalization mechanism that removes the effect of weather from the determination of conservation and energy efficiency results;

- (B) Provisions to address the needs of low-income or low-usage residential customers;
- (C) One (1) or more conservation and energy efficiency programs;
- (D) Provisions to ensure that the rates and service to rate classes, as defined in the utility's tariffs, not participating in conservation and energy efficiency programs are not adversely impacted by those programs;
- (E) A target, satisfactory to the authority, for reductions in energy consumption;
- (F) A timeframe for achieving the target;
- (G) A demonstration that the programs can achieve the target within the timeframe;
- (H) Specification of the necessary funding levels for the programs;
- (I) A demonstration that the programs will collectively be cost-effective under a test, or tests, of cost-effectiveness determined by the authority; and
- (J) A process, satisfactory to the authority, for independent evaluation, measurement and verification of the results of programs.

(b) A natural gas conservation plan filed pursuant to subsection (a) shall not require the filing of a general rate case pursuant to §65-5-101 or §65-5-103. The authority shall approve or deny, within one hundred eighty days (180) days of the filing of the application, a natural gas utility's initial application for any natural gas conservation plan that is filed separate from a general rate case, including a decoupling mechanism if one is filed in conjunction with the natural gas conservation plan. The authority shall approve or, deny within one hundred twenty days (120) days of the filing of an amended plan, a natural gas utility's application to amend a previously approved plan that is filed

separate from a general rate case, including a decoupling mechanism if one (1) is filed in conjunction with the natural gas conservation plan amendment. The statutory rate case timelines shall apply to the approval of the natural gas conservation plan, including a decoupling mechanism if one is filed in conjunction with the natural gas conservation plan, if the natural gas conservation plan is filed as part of a general rate case pursuant to §65-5-101 or §65-5-103. The authority shall have the right to propose modifications to the utility's natural gas conservation plan provided that any such proposed modifications are provided to the utility within sixty (60) days from the date of the utility's initial application or thirty (30) days from the date of the utility's application to amend a previously approved plan, regardless of whether the plan is filed separate or as a part of a general rate case. The applicant may withdraw its request to come under the terms of this section at any time before the entry of a final order of the authority on the merits of the proceeding in which the initial or amended application is made, including a final order in a rate case if the filing is made in conjunction with a rate case, or on a petition for rehearing in the proceeding.

(c) The authority shall consider any proposed decoupling mechanism filed under this section, whether proposed in an original plan or an amended plan. The authority shall approve such plan upon finding the rate design is in the public interest and that the proposed decoupling mechanism is revenue neutral and is otherwise consistent with this part.

AND FURTHER AMEND by deleting subsections (e) and (f) of Section 5 of the printed bill and by substituting instead the following:

(e) The authority shall allow any natural gas utility that implements a natural gas conservation plan under this part to recover, on a timely basis and through its regulated rates charged to the classes of customers participating in the plan, its entire incremental prudent costs associated with conservation and energy efficiency programs that are designed to encourage the reduction of annualized, weather-normalized natural gas consumption per customer. Once the authority approves the utility's proposed

conservation and energy efficiency programs as including prudent costs that are designed to encourage the reduction of annualized, weather-normalized natural gas consumption per customer, the utility shall be entitled to recover all such costs. Ratemaking treatment may include placement of appropriate capital expenditures for technology, research and program costs in rate base, deferral of such costs, or recovery of the utility's technology and program costs through another ratemaking methodology approved by the authority, such as a tracking mechanism. Incremental costs recovered pursuant to this subsection (e) shall be in addition to all other costs that the utility is permitted to recover, and shall not be considered an offset to other authority-approved costs of service or revenue requirements. A conservation plan may rely in part upon, and be complementary to, energy conservation programs funded by federal, state, consumer portions of sharing mechanisms, or other private sources. The portion of the costs of such conservation programs recovered from federal, state, consumer portions of sharing mechanisms, or other private sources shall not be included in the costs eligible for recovery pursuant to this subsection (e).

(f) The authority shall grant recovery, on an annual basis, of a performance-based incentive for delivering conservation and energy efficiency benefits, which shall be included in the utility's respective, purchased gas adjustment mechanism. In structuring this incentive, the authority shall create by rulemaking a reasonable opportunity for an appropriate incentive that will take into account the net economic benefits upon meeting target levels of such benefits set forth in a plan approved by the authority. The rulemaking shall be concluded within one hundred twenty days (120) from the effective date of this act. The incentives authorized by this subsection (f) shall be in addition to any other revenue requirements or rates established pursuant to §65-5-101 or §65-5-103.

AND FURTHER AMEND by deleting subsections (a) and (b) of Section 6 of the printed bill and by substituting instead the following:

(a) Notwithstanding any other provision of this part, a utility, in its discretion and at any time, may elect to have the terms of this section implementing an annual rate review, and the terms of Section 5 apply to its rates and charges for gas distribution service, on a prospective basis, by filing a notice of such election with the authority. Upon receipt of notice of such election, the authority shall proceed to seek comments and to make the findings and establish the ongoing procedures required for adjustments in base rates to be made under this section and shall make such findings and establish such procedures within the same time frame set forth in Section 5 for the approval of a natural gas conservation plan. In carrying out the procedures established by this section with respect to such an election, the authority shall rely upon and utilize the approved rates, charges, revenues, expenses, capital structure, returns, and other matters established in the public utility's most recent general rate case pursuant to §65-5-101 or §65-5-103; provided, however, that the most recent order must have been issued no more than five (5) years prior to the initial election to come under the terms of this section. A utility may combine an election under this section with the filing of a rate case pursuant to §65-5-101 or §65-5-103 and the authority shall include the findings required by this part in its rate orders issued in the §65-5-101 or §65-5-103 proceedings.

(b) The election by a utility to have the terms of this section apply to its rates and charges for gas distribution service once made shall remain in effect until the next general rate case pursuant to § 65-5-101 or § 65-5-103 or show cause proceeding pursuant to §65-2-106 for the electing utility, at which time the utility may elect to continue the applicability of this section to its rates and charges or elect to opt out of this section. The applicant may withdraw its request to come under the terms of this section at any time before the entry of a final order of the authority on the merits of the proceeding in which the election is made or on a petition for rehearing in the proceeding.

AND FURTHER AMEND by deleting subsection (d)(1)(E)(iii) of Section 6 of the printed bill and by substituting instead the following:

(iii) If in any one (1) year the requested revenue increase resulting from the annual rate review is greater than five percent (5%) of the utility's total revenue less gas cost, the utility must file a rate case pursuant to §65-5-103. The authority shall determine the appropriate level of the revenue requirements resulting from exogenous items, including but not limited to: acts of God, war, or terrorism; changes resulting from federal, state or locally imposed requirements such as taxes, fees, safety requirements, or environmental regulations; funding of tax-qualified pension or tax-qualified retirement benefit programs; or any other event beyond the control of the utility that is not considered as part of the requested rate increase for the purpose of determining if the filing of a rate case is required.

AND FURTHER AMEND by deleting subsection (e) of Section 6 of the printed bill and by substituting instead the following:

(e) The authority shall review the annual rate review filed pursuant to subsection (d) to determine compliance with its terms and that any change in rates is just and reasonable. Based upon that review, the authority shall order the utility to make the adjustments to tariff rates necessary to achieve the revenue levels indicated in subdivision (d)(1)(E) necessary to return the utility's return on equity to the authorized level established in the order issued pursuant to subsection (a) of this section.

AND FURTHER AMEND by deleting subsection (f)(5) of Section 6 of the printed bill in its entirety and by substituting instead the following:

(5) On or before the date one hundred five (105) days following the annual review date, the authority shall issue an initial order setting forth any changes required to the utility's request to produce just and reasonable rates under this section, (the "initial order"). In the absence of such an initial order, the gas rate adjustment contained in the utility's filing shall be considered to be granted as filed.

AND FURTHER AMEND by deleting the language "greater than three and one-half percent (3 ½%) of the utility's total revenue" in subdivision (d)(1)(E)(iii) of Section 6 and by substituting instead the language "greater than five percent (5%) of the utility's total revenue less gas cost".

AND FURTHER AMEND by deleting the language "that section" in subsection (c) of Section 6 and by substituting instead the language "those sections".

AND FURTHER AMEND by deleting the language "this section" in subsection (f) of Section 6 and by substituting instead the language "this subsection".

AND FURTHER AMEND by deleting the language "errors in the report" in subdivision (f)(3) of Section 6 and by substituting instead the language "errors in the filing".

AND FURTHER AMEND by deleting Section 7 of the printed bill in its entirety and by substituting instead the following:

SECTION 7. Unless the context clearly indicates otherwise, nothing in this part shall impair the authority of the Tennessee regulatory authority under §65-5-101, §65-5-102, or §65-5-103.